

Deoap/sas nag 304

12/9/11

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM, SAS
NAGAR (MOHALI) .

Consumer Complaint No.249 of 2011

Date of institution: 07.06.2011

Date of Decision: 08.09.2011

Dr. Sanjeev Malhotra S/o Sh. Om Parkash Malhotra, R/o # 435,
Phase-4, SAS Nagar (Pb)-160059.

..... Complainant

Versus

Estate Officer, Greater Mohali Area Development Authority,
PUDA Bhawan, Sector 62, Mohali

..... Opposite Party.

Complaint under Section 12 of the
Consumer Protection Act, 1986.

CORAM:

Shri B.S.Mehandiratta, President.

Dr. S.S.Dhaliwal, Member.

Ms. H.K.Ghuman, Member.

Present: Complainant in person.
Shri G.S. Arshi, counsel for the OP.

ORDER

The case of the complainant is that he is a RTI
Activist from RTI Activists Federation, Punjab and active
participant in campaign against corruption in public
offices. Greater Mohali Area Development Authority (for
short 'the GMADA') is a 'Public Authority' constituted by the
Punjab Government within the meaning of Section 2(h) of the
Right to Information Act, 2005 (for short 'the RTI Act')
and has designated Public Information officers and Assistant
Public Information officers u/Ss 5(1) and 5(2) of the RTI



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Act, to receive applications for information, submitted u/s 6 of the RTI Act, on payment of requisite fee from the applicants as per rules. U/s 7(1) of the RTI Act, the relevant designated Public Information officer is required, within 30 days of the receipt of request for public information, to either provide the information on payment of the requisite fee or reject the request for any of the reasons specified in Sections 8 and 9 of the RTI Act. In case of violation of Section 7(1) and in case of other such aberrations as defined in sub Sections (1) and (2) of Section 20 of the RTI Act, the Public Information officer concerned is liable for penal action under Sub Sections (1) and (2) of Section 20 of the RTI Act.

The complainant alleges that he applied to the Public Information officer, GMADA in the office of the OP for Certified Information under Section 6 of the RTI Act vide his application dated 28.04.2011 Ex C-1 received by the office of the OP vide diary No. 11997 of the same date, by remitting the prescribed fee and postal charges in the form of Indian Postal orders. The OP was the Public Information officer in relation to his aforesaid application. He had sought information on three main paragraphs numbered as 1, 2 and 3 in his application. Para No.1 had four sub paras and para No.2 had three sub-paras. Vide his memo No. 1664 dated 24.05.2011 Ex C-3 Assistant Estate Officer cum APIO of GMADA supplied information regarding two paragraphs but omitted to



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give information sought vide para no.3, intentionally to conceal and delay the information with the purpose to cause harassment and hardship to the complainant. Apart from it, only one page of the six pages information supplied vide memo Ex C-3 was certified.

With the aforesaid 'allegations, alleging deficiency of service and unfair practice on the part of the OP, the complainant has sought direction to the OP to pay him compensation for deficient services and his intentional harassment to the tune of Rs. 25,000/- and to deduct the amount of compensation from the salaries of his responsible employees and to direct the OP to submit compliance report of the same in time bound manner and also to pay him costs of litigation.

2. The OP in its written statement has pleaded that the complainant is not a '**consumer**' as defined in Section 2(1) (d) of the Consumer Protection Act, 1986 (for short the CP Act'). The OP as PIO performs statutory duties under the RTI Act by receiving requests for and providing the information sought for. He is not a '**service provider**' within the meaning of the CP Act. The fee charged from the applicants under the RTI Act for furnishing information is not '**consideration**' for rendering any service. The payment of fee is not a voluntary payment in the sense that payer pays to hire the services. It is mandatory payment required to be made as prescribed for the purpose of getting



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information under the RTI Act. Mere payment of fee does not put the complainant on better pedestal nor can he claim to be treated as consumer of the OP. The alleged failure in supplying the complete information cannot be termed as 'deficiency of service'. The complaint is, therefore, not maintainable.

The OP has further pleaded that the RTI Act is a complete code in itself and provides detailed mechanism and procedure for getting information under it and also provides remedy by way of appeal and contains provision for penalty for the persons who are not provided the information sought by them or are provided incomplete information. Section 23 of the RTI Act bars the jurisdiction of this Forum to entertain the complaint. He has pleaded that GMADA is 'Public Authority' within the meaning of Section 2(h) of the RTI Act and not its Estate Officer and it is GMADA which has designated PIO and APIO under Sub Sections 5(1) and 5(2) of the RTI Act. The application of the complainant seeking information was dealt with by the PIO, GMADA after receiving the prescribed fee. He has pleaded that the requisite information was duly supplied to the complainant. If he was not satisfied with the letter of the APIO dated 24.05.2011 Ex C-3 supplying the information, he could have availed the remedy of appeal under the RTI Act. In Sub para 2(c) of his application, the complainant had asked for certified copy of decision of Council of Ministers and in para no. 3 of his



ATTESTED
22/09/11
Superintendent
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application he had asked for order of Govt. of Punjab. He was provided information sought by him in para 2 (c) to the effect that copy of the decision of Council of Ministers, Punjab was not available in the office and could be obtained from the office of the State of Punjab. Complete information vide Ex C-3 has been provided to the complainant. Denying allegations of deficiency of service and unfair practices, the OP has sought dismissal of the complaint against him.

3. Parties have led evidence.

4. The complainant has tendered in evidence his affidavit Ex CW1/1; copies of his application dated 28.04.2011 to the PIO of the OP Ex C-1; IPO counterfoils Ex C-2/1 and Ex C-2/2; letter of the Asstt. Estate Officer cum APIO No. 1664 dated 24.05.2011 supplying the information sought for Ex C-3; notice of the OP published in the issue of newspaper Daily Ajit, Jalandhar dated 14.11.2009 Ex C-4 and the list of 87 houses supplied by the OP Ex C-5.

5. The evidence of the OP consists of affidavit of Mr. S.C. Rana, Estate Officer of GMADA/PIO Ex RW1/1.

6. We have heard the complainant in person and learned counsel for the OP.

7. The first point for consideration is whether the complainant is a 'consumer' and the OP is a 'service provider' within the meaning of Section 2(1) (d) of the CP Act. In this regard, learned counsel for the OP has contended that the fee paid by an applicant for seeking



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information under the provisions of the RTI Act is not a 'consideration' nor is supply of information under the RTI Act 'service' within the ambit of the CP Act. The PIOs and the APIOs designated under the RTI Act are discharging statutory functions and are not rendering any 'service' within the purview of the CP Act. The RTI Act provides detailed mechanism for remedy where the PIO/APIO fails to provide the demanded information by way of appeal to the State Public Information Officer (SPIO) which the complainant could have availed.



He has argued that Section 23 of the RTI Act bars the jurisdiction of this Forum to entertain the complaint. Learned counsel for the OP has also cited a few decisions in support of his contention. He has firstly cited *Rajasthan Pharmacy Council Vs. Dhanpat Singh Jangid, III* (2001) CPJ 392 (Hon'ble Rajasthan State Consumer Disputes Redressal Commission). In this case, the applicant's application for registration as Pharmacist was declined by the Registrar of the concerned Council. It was held that the Registrar performs statutory duties while granting registration and payment of the fee paid to him for registration cannot be called as consideration for rendering any service and, therefore, relationship of 'consumer' and 'provider of service' did not exist between the parties and a complaint for refusal to register the applicant as a Pharmacist could not be filed in the Consumer Forum.

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In the second authority cited by him titled as *Tahsildar, Tahsildar Office, Cuddalore vs D. KANAKAVALLI & ANR.*, II (2004) CPJ 461 (Hon'ble Tamilnadu State Consumer Disputes Redressal Commission), the Tahsildar failed to carry out survey operation of a property. It was held that survey of land was part of sovereign duty performed by him. Failure to perform such a statutory duty did not amount to deficiency of service and the complaint in that regard was not maintainable in the Consumer Forum.

In *Nilamani Swain Vs. Collector, Cuttack & 2 Ors*, III (1998) CPJ 177 (Hon'ble Orissa State Consumer Disputes Redressal Commission) cited by him, the applicant applied for a certified copy of a document to the Collector by affixing proper stamp duty thereon. The copy could not be supplied as records were not traceable inspite of best efforts. It was held that stamp duty on applications for copies is for the purpose of augmentation of revenue of State and that no element of 'service' was connected therewith. It was held that applicant for certified copy of a document was not a 'consumer' as defined under Section 2 (1) (d) of the CP Act and could not maintain a complaint in the Consumer Forum.

In *Surendranath Khuntia Vs. Chief Secretary-cum-Secretary to Govt. of Orissa & Ors.*, IV (2010) CPJ 429 (Hon'ble Orissa State Consumer Disputes Redressal Commission), the last ruling cited by learned counsel for



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 Superintendent
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the OP, the applicant took on lease land from the Govt. of Orissa and then applied for conversion of the lease hold rights into free hold rights on payment of fee. The Govt. authorities collected rates at over 10% though they should have collected the same at the rate of 5%. The lease holder alleged deficiency in service and filed complaint in the Consumer Forum. It was held that decision of premium payable for lease and fee for conversion into free hold were policy decisions of the Govt. and while implementing those decisions, the competent State Govt. authorities would perform sovereign functions. It was held that the Consumer Fora could not assume jurisdiction regarding a dispute between the sovereign authority and any person. The competent authorities of the State Govt. while performing sovereign functions are not amenable to the jurisdiction of the Consumer Fora. Fee paid by lease holder for conversion into free hold was an amount which went to the Govt. exchequer. It was held that neither the complainant was a 'consumer' nor the competent authorities of the State Govt. who had been arrayed as OPs were 'service providers'. Learned counsel for the OPs has argued that in the present case also, the OP has performed statutory duties under the RTI Act while supplying information to the complainant and, therefore, his acts of commission and omission while performing these duties are not amenable to the jurisdiction of the Consumer Fora.



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12/9/11
Superintendent

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8. On the other hand, the complainant has argued that the RTI Act does not provide to an applicant remedy as a 'consumer' which he can avail of only under the CP Act. He has further argued that an applicant under the RTI Act seeking information under the relevant Sections is a 'consumer' and the Information Officer is a 'service provider' and so is the Public Authority which has designated him so and any acts of commission and omission on the part of the Information Officer amount to 'deficiency of service' amenable to the jurisdiction of Consumer Fora. In support of his contention, he has cited two decisions of the Hon'ble National Commission. The first is Smt. Usha Rani Aggarwal Vs. Nagar Palika Parishad, Haldwani, District Nainital etc. arising out of appeal Nos.931 and 932 of 2003 decided by the Hon'ble National Commission on 06.09.2006. It was specifically held by the Hon'ble National Commission in this decision that applicants under the RTI Act seeking information were 'consumers' because for getting copies of relevant documents (assessment order in that case), they were required to deposit requisite fee which was consideration for the service rendered. Non supply of a copy amounted to 'deficiency of service' on the part of the municipal committee. In the second decision cited as Dr. S.P. Thirumala Rao Vs. Municipal Commissioner, Mysore City Municipal Corporation, arising out of Revision Petition No.1975 of 2005 decided by the Hon'ble National Commission



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 Superintendent
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on 28.05.2009, the learned District Forum held that Section 3 of the CP Act provides an additional remedy to a 'consumer' and, therefore, any provision in the RTI Act barring jurisdiction of the Court (as under Section 23 of the RTI Act, 2005) did not bar the jurisdiction of the Consumer Fora to entertain a complaint of 'deficiency of service' on the part of the information officer more so because the relevant Section barring the jurisdiction applied to the courts whereas any Consumer Fora is not a court. The District Forum also held that failure of the Information Officer to furnish information in time prevented the complainant from approaching the appropriate appellate authority for redressal of his grievance and, therefore, he was entitled to invoke jurisdiction of the District Consumer Forum. The appeal filed by the Information Officer was accepted by the Hon'ble State Commission by holding that once the complainant had availed the remedy against which appeal was provided, he could not maintain a complaint under the CP Act. In the revision petition filed against the order of the Hon'ble State Commission, the Hon'ble National Commission set aside the order of the Hon'ble State Commission and restored that of the learned District Consumer Forum with the following observations:

"The District Forum had dealt with the objections raised by the opposite party regarding bar of jurisdiction of Courts under Section 10 of the Act as also the overriding effect of the Act. The State Commission in the impugned order did not at all refer to the findings of the District Forum on



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the said issues but allowed the appeal only on the ground that once the complainant had already availed remedy under the said Act and appeal is provided therein, the complainant cannot maintain a complaint under the CP Act. We may at this stage point out that the findings of the District Forum with reference to Section 10 & 11 are supported by reasons which do not call for any interference. In fact, the view taken by the District Forum is in consonance with the rulings of this Commission in the case of Smt. Kalawati (supra) and Smt. Usha Rani Aggarwal (Supra). We entirely agree with the reasoning of District Forum on this aspect. Though the said Act provides for penalties under Section 9 of the said Act on the competent authority, yet, the Act does not provide for any remedy to the consumers who have sought information under the said Act for deficiency of service in the nature of compensation or damages for not furnishing the information sought to which they are entitled to get under the said Act. Section 3 of the CPA provides additional remedy in addition to the remedies provided under other Acts and it is not in derogation of any provisions of any law. The Consumer Fora has, therefore, jurisdiction to entertain the complaint in respect of deficiency of service in the given facts especially when information sought was not furnished. The competent authority was required to give information within 15 days of the application in terms of Section 5 of the said Act. However, the said information was not furnished. The complainant had approached the District Forum claiming compensation/damages for deficiency of service. Even though, further remedy may be available to the applicant in case information is not supplied in terms of Section 5 of the Act within 15 days, yet there is no bar to approach the District Forum for deficiency of service. The remedy under the said Act would take care of disciplinary action and penalty against the competent authority in not furnishing the information but no remedy is provided under the said Act to the applicant seeking information therein if information sought is not provided resulting in deficiency of service on that count. The applicant had paid a fee of Rs.10/- for seeking the said information. The case of the applicant would fall within the scope and ambit of Section 2 (i) (o) CP Act, which provides that service, means service of any description which is made available to potential users, which include



ATTESTED
 22/09/11
 Superintendent

purveying of news or supplying of other information. The complainant had availed of the services under the said Act for consideration by paying fee and had sought information under the said Act, which was not supplied to him, which amounts to deficiency of service. The complainant is, thus, a consumer vis-à-vis information sought on payment under the said Act. In our view, therefore, the State Commission was wrong while holding that once the complainant had availed the remedy against which appeal was provided, he could not maintain a complaint under the CP Act."

9. In view of the aforesaid two direct rulings of the Hon'ble National Commission, it is not possible to rely upon the rulings cited by learned counsel for the OP and to hold that since Information Officers under the RTI Act are performing statutory duties they are not service providers. The decisions of the Hon'ble National Commission cited above leave no manner of doubt that the fee paid by an applicant under the provisions of RTI Act is 'consideration', the applicant is a 'consumer' and the information officer is 'service provider'. The action of furnishing of information for the fee received is rendering of service and the failure in supplying the information as per provisions of the RTI Act is 'deficiency of service' within the purport and meaning of provisions of the CP Act. The complaint before this Forum is, therefore, maintainable.

10. The next question for determination is whether there has been a case of deficiency of service on the part



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Superintendent

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of the Information Officer of GMADA. In this regard, we may refer to the application of the complainant Ex.C-1 for information, para No.3 of which reads as under:

"Para 3 of the judgment dated 14.09.2010 in CWP No.16345 of 2009 shows that at a meeting that was held on 23.12.2009 under the Chairmanship of the Chief Minister, Punjab, where regularization of the illegal possession of flats was decided. In this regard, kindly provide the certified copy of such said official directive/order from Govt. of Punjab or Chairman PUDA/GMADA."

11. The reply of the Information Officer concerned to this application Ex.C-3 is reply to various sub paras of Para Nos.1 and 2 only and is incomplete as it omits to give any reply at all to Para No.3. The explanation offered in the written statement in this regard is to the effect that in sub para (c) of Para No.2 of his application, the complainant sought certified copy of the decision of Council of Ministers and in Para No.3 of his application he had sought copy of the order of the Govt. of Punjab. The information contained in sub para (c) of Para No.2 was provided to the complainant to the effect that copy of the decision of Council of Ministers of Punjab was not available in the office of the GMADA and the complainant could obtain the same from the office of State of Punjab. What the OP means to say is that information sought vide sub para 2 (c) and vide Para 3 of the application of the complainant was virtually the same.



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12. However, we find no merit in this contention. Para No.2 of the application of the complainant Ex.C-1 is to the following effect:

"Para 7 of judgment dated 14.09.2010 in CWP No.16345 of 2009 shows that GMADA/PUDA had invited applications from amongst the 1984 riot victims for allotment of 87 LIG flats in terms of the decision taken by the Council of Ministers Punjab by advertisement dated 14.11.2009.

In this regard kindly provide following information:

- 2a) certified copy of the said advertisement dated 14.11.2009 by PUDA/GMADA.
- 2b) certified copy of list showing addresses of 84 houses/flats recognised by Council of Ministers, Punjab, for allotment.
- 2c) certified copy of said decision of Council of Ministers, Punjab."



13. A comparison of Para Nos.2 and 3 of the complainant's application Ex.C-1 shows that while in sub para (c) of Para No.2 he seeks certified copy of decision of the Council of Ministers of Punjab taken prior to the advertisement dated 14.11.2009 given by GMADA/PUDA in the newspaper, in Para No.3 he has sought certified copy of the official directive/order of the Govt. of Punjab or Chairman PUDA/GMADA regarding regularisation of illegal possession of flats by 1984 migrants in pursuance of meeting held on 23.12.2009 under the Chairmanship of the Chief Minister Punjab. It would be seen that information sought by vide Para No.2 (c) and Para No.3 was altogether different and pertained to different dates. Non supply of information

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 29/12/2011
 Superintendent
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sought by the complainant vide Para No.3 of his application is thus clearly a deficiency of service on the part of the Information Officer of GMADA. The complainant admittedly did not file any appeal against the order/letter dated 24.05.2011 Ex.C-3 for failure of the APIO to furnish information regarding Para No.3 of the application Ex.C-1 and, therefore, the complaint in this Forum is maintainable.

14. For the reasons recorded above, GMADA is directed through its Estate Officer-cum-PIO to pay a compensation of Rs.15,000/- (Rupees fifteen thousand only) to the complainant and also pay him costs of litigation to the tune of Rs.1,000/-. It shall be open to GMADA to recover this amount from the concerned defaulting employee(s)/officer(s). Certified copies of this order be furnished to the parties forthwith free of cost and thereafter the file be consigned to the record room.

Pronounced.
September 08, 2011



Certified to be true copy

Done 08/09/11
Superintendent
Distt. Consumer Disputes Redressal Forum
S.A.S. Nagar (Mohali)
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Case No.	249/11
Date of Disposal	8/9/11
Order sent by	Rand
Date of Issuance	12/9/11
<i>Done 12/9/11</i> Superintendent	

SD-
(B.S.Mehandiratta)
President

SD-
(Dr.S.S.Dhaliwal)
Member

SD-
(Ms.H.K.Ghuman)
Member